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## WEEKLY FINANCIAL SERVICES REPUBLICAN ROUND-UP 10.23.2009

### MESSAGING RESOURCES/POLLING UPDATE

Democrats' Investor Regulation Bill Rewards Trial Lawyers At The Expense Of Investors.

• The Democrats' so-called Investor Protection Act, scheduled for markup next week, provides authority to the SEC to restrict mandatory pre-dispute arbitration agreements for disputes arising under Federal securities laws. Concerns regarding arbitration agreements related to consumer credit contracts are not relevant to securities industry arbitration, which provides investors the opportunity to have their claims heard close to home, before highly trained and experienced arbitrators, in a forum that has proven to resolve disputes at least as fairly as the judicial system, and much faster and less expensively.

Barron's: "Brokerage arbitration, a system run by FINRA and previously by the National Association of Securities Dealers, is virtually the only way for investors to seek redress. While the system has long been criticized as being stacked against investors, the picture is starting to brighten. Investors won some 45% of the cases decided this year through August, up from 37% in 2007, according to FINRA. For claims under \$1 million -- the bulk of the total -- winning investors are typically getting about half the amount they seek, says Richard Ryder, editor of the Securities Arbitration Commentator.... FINRA, for its part, is expanding a pilot program to allow investors to choose panels of arbitrators made up entirely of members of the general public, rather than the traditional setup of two public members and one industry-related member." (10/19/2009)

• Rep. Maxine Waters plans to offer an amendment to repeal the U.S. Supreme Court's Stoneridge decision that curtailed "aiding and abetting" liability against third parties for securities fraud carried out by other companies. This is yet another attempt to benefit trial lawyers at the expense of investors, who recover only pennies on the dollar in class action lawsuits. Instead of rewarding the trial bar, Democrats should focus on proposals that maximize recoveries for defrauded investors.

• Requiring broker-dealers and investment advisors be held to the same fiduciary standard could put sellers of commission-based investment products at a competitive disadvantage versus fee-based products and subject them to increased litigation. The result could be fewer investment options for investors who cannot afford to pay upfront fees for financial services advice. Bernard Madoff had a fiduciary duty to his customers but violated all of its tenets. The problem wasn't the lack of a fiduciary standard, but a failure on the part of the SEC to fulfill its examination and enforcement responsibilities.

## Polling Update

Rasmussen: "50% Still Lack Confidence In U.S. Banks...One-out-of-two Americans (50%) still lack confidence in the U.S. banking system, according to a new Rasmussen Reports national telephone survey."

Rasmussen: "81% Still Concerned About Inflation...The latest Rasmussen Reports national telephone survey finds that 81% of American adults are somewhat or very concerned about inflation, down just two points from July and four points from April. That figure includes 57% who say they are very concerned."

## LESSONS LEARNED THIS WEEK

Democrats Still Support ACORN. While Democrats publicly appeared to cut their ties with ACORN once videotaped evidence surfaced linking the organization to possible criminal activity, they are making a back door attempt to give the disgraced organization increased power over the U.S. financial system. Democrats on the Financial Services Committee approved an amendment by Rep. Maxine Waters (D-CA) to the CFPA that will make ACORN and other consumer activist organizations eligible to serve on the CFPA's Oversight Board, thus giving them an advisory role on regulating the very financial institutions from which they receive millions of dollars annually in direct corporate contributions and through other financial partnerships and arrangements.

## ON THE HORIZON

Tuesday, October 27 (and subsequent days if necessary): The Full Committee will meet to mark up legislation to reform credit rating agencies; H.R. 2609, the Insurance Information Act; H.R. 3817, to provide the Securities and Exchange Commission with additional authorities to protect investors from violations of the securities laws; and H.R. 3818, to amend the Investment Advisers Act of 1940 to require advisers of certain unregistered investment companies to register with and provide information to the Securities and Exchange Commission at 10 am in room 2128 Rayburn.

Thursday, October 29: The Full Committee will meet for a hearing entitled "Systemic Regulation, Prudential Matters, Resolution Authority and Securitization at 9:30 am in room 2128 Rayburn.

Friday, October 30: The Full Committee will convene a hearing on the "Overdraft Protection Act of 2009" at 10 am in room 2128 Rayburn.

## WEEKEND MUST-READS

Wall Street Journal: "Banks May Face New Capital Requirements ... Momentum is building within the Federal Reserve to force banks, especially large ones, to stock up on a new kind of debt that would convert into equity if they hit rocky times."

NY Times: "S.E.C. Proposes Tighter Limits on Private Trading System ... Federal regulators are proposing tighter oversight for so-called dark pools, trading systems that do not publicly provide price quotes and compete with major stock exchanges."

LA Times: "Community banks to get bailout money as Obama seeks to boost small business ... President Obama, looking to boost lending to small business, will start using some of the leftover federal bailout funds to shore up smaller community banks and induce them to offer credit to firms he called the "backbone of the American economy.""

The Washington Times: "Bernanke: Speeding up credit card rules could hurt consumers ... Federal Reserve Chairman Ben S. Bernanke warned Congress this week about efforts to move up the effective date of tough new rules for credit card companies, saying such action could hurt consumers as much or more than help them."

USA Today: "Watchdog excoriates execution of TARP ... A Treasury Department watchdog is warning that a key \$700 billion bailout program has damaged the government's credibility, won't earn taxpayers all their money back and has done little to change a culture of recklessness on Wall Street."

Wall Street Journal: "Pay Master Navigated Some Conflicting Demands ... At the heart of Kenneth Feinberg's job as the Treasury's special master for compensation has been a series of tense paradoxes."

Wall Street Journal: "Our New Paymasters ... In the annals of what used to be known as American capitalism, yesterday will go down as a sorry day: The Treasury and Federal Reserve announced wage controls on private American companies."

Wall Street Journal: "Interchange Fees Step Into the Spotlight ... After buckling to pressure on overdraft fees, the banking industry is trying to fend off an attack on an even bigger cash cow."

USA Today: "Government unveils new mortgage help ... The Obama administration is unveiling a new program to provide support to state and local housing agencies to provide help to thousands of home buyers and renters."

Rep. Randy Neugebauer issued this press release: Who Knows Best: The Federal Government or the American people?

Rep. Adam Putnam issued this press release: Putnam says financial product approval bill will hurt Americans

Rep. Ed Royce appeared on CNBC to discuss financial regulatory reform.

Rep. Michele Bachmann issued this press release: House Committee Passes Bachmann Amendment to Prohibit ACORN Involvement in Consumer Advisory Board

Rep. Erik Paulsen appeared on Fox Business News to discuss regulatory reform.

Rep. Spencer Bachus issued these press releases: Federal Reserve Board Chairman Bernanke Raises Implementation Concerns With Legislation To Accelerate The CARD Act; Frank Shuts Down Debate On Legislation That Represents The Largest Expansion Of Financial Regulation; Bachus Statement On Safety And Soundness Amendment.

#### CARTOON OF THE WEEK

(Washington Post 10/23/2009)